**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

# SPECIAL CIVIL APPLICATION No. 14860 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.S.DAVE**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BALKRUSHNA ALIAS BALIYO KANAIYALAL KAHAR**
**Versus**
**COMMISSIONER OF POLICE OF CITY OF VADODARA AND OTHERS**

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**Appearance :**
MS BANNA S DUTTA for the Petitioner
MRS HB PUNANI, ASSISTANT GOVERNMENT PLEADER for the Respondents

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**CORAM : HONOURABLE MR.JUSTICE A.S.DAVE**

**Date : 30/08/2005**

**ORAL JUDGMENT**

This petition under Article 226 of the Constitution of India challenges the order of detention dated 01.06.2005 passed by respondent No.1 in exercise of power under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, 'the PASA Act').

That main challenge to the order of detention, as submitted by learned advocate for the petitioner is on the ground that there is a delay in passing the order of detention dated 01.06.2005, since the proximity with the last offence registered against the detenu at Panigate Police Station, Baroda vide CR No.187 of 2005 under the provisions of Bombay Prohibition Act, is dated 22.04.2005. Therefore, about one month and 8 day's delay has occurred in passing the order of detention. Learned advocate for the petitioner has drawn the attention of this Court that on the vary same day, three offences came to

be registered vide four different CRs within a span of half an hour. According to learned advocate for the petitioner, all the CRs have been lodged at Panigate Police Station, Baroda, headed by the Police Inspector, Panigate Police Station. Therefore, the time taken by the detaining authority in passing the order of detention dated 01.06.2005 for scrutiny of record and sending proposal by the concerned authority cannot be said to be reasonably explained on the part of the detaining authority, who explained the delay in passing the order of detention. She submitted that except the crime record of the detenu at Panigate Police Station, nothing is stated in the affidavit in reply about the reliance on relevant material by the detaining authority and even in the present case, statements of witnesses are also not recorded or called for by the detaining authority. In such circumstances, the averments made in the affidavit in reply by the deponent cannot be said

to have explained the delay reasonably as per the requirement of law.

In support of the above mentioned submissions, learned advocate for the petitioner has relied on the decision reported in 1997 GLH 381 and specifically 2002(1) GLR 1017, where this Court considered the facts about delay in passing the order of detention has held that, delay itself may not be fatal for the detention order if it is explained to the satisfaction of the Court, but if not than the detention order is required to be quashed and set aside.

She has also relied on the decision of this Court dated 13.05.2003 delivered in Special Civil Application No.12376 of 2002 in the case of **CHETANSINH ALIAS CHINTU RABJITSINH JADEJA VS. STATE OF GUJARAT.** According to her, the facts of that case are squarely applicable to the facts of the present case, since in the above matter also

there was delay in passing the order of detention and asmuchas various offences, four in number, came to be registered against the detenu of that case on 03.09.2001, 18.06.2001, 04.07.2002 and 04.09.2002. The last offence registered was on 04.09.2002. Even the statements of witnesses were recorded on 22.09.2002 and verified by the competent authority after a week on 30.09.2002 and thereafter, order of detention came to be passed on 03.10.2002. Therefore, in that case there was delay of about 29 days in passing the order of detention from the date of last registered offence.

Therefore, the contention of the learned Assistant Government Pleader to the effect that the delay of one month and eight days in the present case is explained reasonably by the detaining authority, is not well founded on the basis of the facts as exist on the record of the case. In the present case, the last offence

bearing CR No.III-188/2005 was registered on 22.04.2005 at Panigate Police Station under the provisions of Bombay Prohibition Act and thereafter, proposal was prepared on 12.05.2005 and the order of detention came to be passed on 01.06.2005. The above explanation in paragraph No.18 of the affidavit in reply indicates about collection of record in connection with the offence registered by the Police Inspector, Panigate Police Station. The only event which has taken place is preparation of proposal on 12.05.2005 on the basis of the crime record as did exist at Panigate Police Station. Even no statement of witness is recorded and in the circumstances, the delay of about one month and eight days cannot be said to be reasonably explained by the detaining authority and reliance of learned advocate for the petitioner on the above decision in Special Civil Application No.12376 of 2002 dated 13.05.2003 is well founded. The learned Single Judge in paragraph

No.6 of that decision observed as under:

> “6. From the above spectrum of facts, there is no doubt there is delay of about one month in passing the detention order from the date of last offence. It is settled proposition of law that in detention matters, ipso-facto, while passing the order of detention, it is incumbent upon the authority as mandated by law to explain the delay satisfactorily, failing which, the detention order would assume the color of illegality. It is also now well settled that considering the unexplained delay, whether short of long, especially when the detenu has taken a specific defence or plea of delay, the order of detention has to be quashed. No doubt, it is true that in a given case, delay in passing the order of detention after an incident or incidents would not be fatal to detention of a person, for, it may be unavoidable or reasonable. What is required by law is that the delay has to be satisfactorily accounted for or explained by the detaining authority so as to obliterate and snapping of link between the prejudicial activities and the purpose of detention. In the facts of the case, delay has not been

explained, much less, satisfactorily. In the opinion of this Court, therefore, there is ample substance in the plea of delay. It is therefore that the detention order questioned in this writ petition under Article 226 of the Constitution of India cannot be sustained. The detention order, therefore, cannot be said to be legal and valid and deserves to be quashed and set aside on this ground alone. The view which this Court is inclined to take is also very much supported by the following decisions:

a) Thakore Girishji @ Gidhaji Jenaji v. District Magistrate & Ors. 2002(1) GCD 2338
b) Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City – 1997(1) GLH 381
c) Pradeep N.Paturkar v. S.Ramamurthi – AIR 1994 SC 656.”

I am in agreement with the above mentioned ratio laid down by this Court as applicable in the facts of the present case and, therefore, do not think it proper to consider other grounds, as rightly not relied on by the learned advocate for the petitioner. Therefore, in this case, delay of

one month and eight days in passing the order of detention, from the date of last registered offence on 22.04.2005 is fatal since not reasonably explained by the detaining authority and as a result, order of detention dated 01.06.2005 is to be quashed and set aside.

Under the circumstances, the order of detention dated 01.06.2005 is held illegal and violative of the provisions of Constitution of India and ordered to be quashed and set aside. The detenu is to be set at liberty forthwith, if he is not required in any other case by any authority. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(ANANT S.DAVE, J.)

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